

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TIMOTHY CHANDLER SPRADLIN,
Plaintiff,
v.
PIERCE COUNTY JAIL, *et al*,
Defendants.

Case No. C07-5236FDB-KLS

**REPORT AND
RECOMMENDATION TO DENY
APPLICATION TO PROCEED *IN
FORMA PAUPERIS***

Noted for October 19, 2007

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff has filed a civil rights complaint under 42 U.S.C. § 1983 and an application to proceed *in forma pauperis*. To file a complaint and initiate legal proceedings, plaintiff must pay a filing fee of \$350.00 or file a proper application to proceed *in forma pauperis*. Because plaintiff has failed to respond to the court's order to show cause, the undersigned recommends the court deny his application.

DISCUSSION

The Court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. See 28 U.S.C. § 1915(a). However, the Court has broad discretion in denying an

1 application to proceed *in forma pauperis*. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963), *cert. denied*,
 2 375 U.S. 845 (1963).

3 Several district courts have ruled that denial of *in forma pauperis* status is not unreasonable when
 4 a prisoner is able to pay the initial expenses required to commence a lawsuit. See Temple v. Ellerthorpe,
 5 586 F.Supp. 848 (D.R.I. 1984); Braden v. Estelle, 428 F.Supp. 595 (S.D.Tex. 1977); U.S. ex rel. Irons v.
 6 Com. of Pa., 407 F.Supp. 746 (M.D.Pa. 1976); Shimabuku v. Britton, 357 F.Supp. 825 (D.Kan. 1973),
 7 *aff'd*, 503 F.2d 38 (10th Cir. 1974); Ward v. Werner, 61 F.R.D. 639 (M.D.Pa. 1974).

8 On May 9, 2007, the Clerk received plaintiff's complaint and application to proceed *in forma*
 9 *pauperis*. (Dkt. #1). On May 15, 2007, the Clerk sent plaintiff a letter informing him that he must provide
 10 a copy of his prison trust account statement showing transactions for the past six months by June 14,
 11 2007, or this matter could be subject to dismissal. (Dkt. #2). On July 6, 2007, the undersigned issued an
 12 order to show cause, informing plaintiff that pursuant to 28 U.S.C. § 1915(a)(2):

13 A prisoner seeking to bring a civil action or appeal a judgment in a civil action or
 14 proceeding without prepayment of fees or security therefor . . . shall submit a certified
 15 copy of the trust fund account statement (or institutional equivalent) for the prisoner for
 16 the 6-month period immediately preceding the filing of the complaint or notice of
 17 appeal, obtained from the appropriate official of each prison at which the prisoner is or
 18 was confined.

19 (Dkt. #3). The undersigned further informed plaintiff thus that while was required to submit a statement
 20 showing the balance and activity of his account for the six-month period immediately preceding the filing
 21 of his complaint, as of the date of the order to show cause, he had not done so. The undersigned gave
 22 plaintiff until August 6, 2007, to cure this deficiency. To date, however, plaintiff has not done so, or filed
 23 a response to the undersigned's order to show cause.

CONCLUSION

24 Because plaintiff has failed to respond to the Court's order to show cause regarding the deficiency
 25 in his application to proceed *in forma pauperis*, the undersigned recommends the Court dismiss plaintiff's
 26 complaint unless he pays the required \$350.00 filing fee **within thirty (30) days** of the Court's order.

27 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rules of Civil Procedure ("Fed. R. Civ. P.") 72(b),
 28 the parties shall have ten (10) days from service of this Report and Recommendation to file written
 29 objections thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those
 30 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit

1 imposed by Fed. R. Civ. P. 72(b), the Clerk is directed to set this matter for consideration on **October 19,**
2 **2007**, as noted in the caption.

3 Dated this 20th day of September, 2007.

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Karen L. Strombom
United States Magistrate Judge